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November 4, 2002
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 25, 2002

Case Number: VSO-0540

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." 1/ A DOE Operations Office suspended the individual's access authorization pursuant to the provisions of Part 710. 2/ As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

In August 1999 the individual executed a Drug Certification in which he agreed not to "buy, sell, accept as a gift, experiment with, traffic in, use or be involved with illegal drugs (narcotics, hallucinogens, and other drugs listed in the Controlled Substances Act) at any time, in any country, in any job in which [he] ha[s] been given a DOE access authorization or security clearance." *See* DOE Exhibit (Ex.) 3-2. Shortly thereafter, the DOE granted the individual a security clearance. On December 14, 2001, the individual was arrested for Unlawful Possession of a Controlled Substance, Crack Cocaine. *See* DOE Ex. 3-3.

After the individual notified the DOE of his arrest, the DOE interviewed the individual to explore, among other things, the circumstances surrounding the arrest and the extent of the individual's drug use. Subsequently, the DOE initiated formal administrative review proceedings by informing the individual that his access authorization had been suspended pending the resolution of certain

1/ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

2/ On September 11, 2001, the DOE issued revisions of the Part 710 regulations, amending procedures for making final determinations of eligibility for access authorization. 66 Fed. Reg. 47061 (September 11, 2001). The revised regulations were effective immediately upon publication, and govern the present Decision.

derogatory information that created substantial doubt regarding his continued eligibility to hold a DOE security clearance. This derogatory information is described in a Notification Letter issued to the individual on March 25, 2002, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections l and k. More specifically, Attachment 1 to the Notification Letter (Attachment 1) alleges that the individual has (1) “engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security” (Criterion L); and (2) “trafficked in, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law” (Criterion K).

Regarding Criterion L, Attachment 1 states that the individual violated the DOE Drug Certification that he signed on August 18, 1999, by his admitted use of crack cocaine at least four times between January 2001 and September 2001. In addition, according to Attachment 1, the individual admitted during a personnel security interview (PSI) conducted on January 8, 2002 to using, buying, and possessing crack cocaine on December 14, 2001. Finally, Attachment 1 cites as a concern under Criterion L the individual’s arrest for possession of a Controlled Substance, crack cocaine, on December 14, 2001.

With regard to Criterion K, Attachment 1 cites the individual’s admission in January 2002 that he had used crack cocaine in several times 2001, most recently on December 14, 2001.

On April 25, 2002, the Office of Hearings and Appeals (OHA) received the individual’s request for an administrative review hearing in this matter. On April 29, 2002, the OHA Director appointed me as the Hearing Officer in this case and I convened a hearing in accordance with the Part 710 regulations. 10 C.F.R. § 710.25 (a), (b), (g).

At the hearing, nine witnesses testified. The DOE called the individual and a personnel security specialist. The individual presented the testimony of seven witnesses: his wife, his manager, two members of Alcoholics Anonymous (AA), a therapist from his employer’s Employee Assistance Program (EAP), his physician, and a clinical psychologist who is treating him for mental health issues. The DOE submitted 15 documents into the record (Exhibits 1-4 with multiple subparts); the individual tendered 27 exhibits (Exhibits A through F with multiple subparts).

II. Regulatory Standard

A. The Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden of persuasion on the individual because it is designed

to protect national security interests. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

An administrative review hearing is conducted “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence to mitigate security concerns.

B. Basis for the Hearing Officer’s Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual’s access authorization eligibility in favor of the national security. *Id.*

III. Findings of Fact

The essential facts in this case are not in dispute. The individual executed a Drug Certification on August 18, 1999, to allay the DOE’s concerns about his prior illegal drug use in the 1970s. Exs 3-2, 4 at 42. The DOE granted the individual a security clearance in 1999 based on the individual’s written assurance provided in the Drug Certification that he would refrain from using or becoming involved in any way with illegal drugs while holding a DOE access authorization. Ex. 3-2.

Within 18 months of signing his Drug Certification, the individual violated his commitment to the DOE several times by purchasing or using crack cocaine. Transcript of Hearing (Tr.) at 102, Ex. C. The individual’s first breach of his drug certification occurred in December 2000 or January 2001 when he smoked crack cocaine with a female hitchhiker whom he had picked up while driving his vehicle. Ex. 4-2 at 108. He subsequently breached his agreement with the DOE two to three other times between January 2001 and the fall of 2001 when he smoked crack cocaine with other female hitchhikers to whom he had offered rides. *Id.* at 100-101.

The individual's most recent involvement with crack cocaine and abrogation of his commitment to the DOE occurred on December 14, 2001. *Id.* at 79. Sometime between 8:30 p.m. and 9:30 p.m. that evening, the individual picked up a female hitchhiker in an area known for the widespread availability of drugs and prostitution. *Id.* at 81. The individual admits that he took "two to three hits" from a pipe filled with crack cocaine while driving around in his car. *Id.* at 81-86. According to the individual, it was his female passenger who furnished the crack cocaine to him and filled the crack pipe for his use during the drive. *Id.* Sometime around 10:30 p.m. that same evening, the individual picked up another female in the same vicinity as the first hitchhiker whom he had already dropped off. *Id.* at 89. The second hitchhiker gave the individual two rocks of cocaine and he, in turn, gave her \$20. *Tr.* at 102. At the hitchhiker's request, the individual drove her to a house and waited outside in his vehicle for her to return. *Ex.* 4-2 at 37-38. Unknown to the individual, the house in question was under police surveillance for suspected drug dealing. After the hitchhiker emerged from the house, the individual resumed driving. A police officer who had observed the individual's vehicle at the house under surveillance also observed that one of the lights on the individual's vehicle was not operational. The police officer followed the individual's vehicle and then initiated a traffic stop. After obtaining the individual's permission to search his vehicle, the police officer found crack cocaine. The police officer arrested the individual and charged him with unlawful possession of a controlled substance, crack cocaine. While at the police station, the individual told police that he would do anything if they would "lose the paperwork" relating to his arrest. The individual explained to police that he feared the drug arrest would jeopardize his security clearance and his job. The police officer to whom the individual communicated his request memorialized it in a police report. *Ex.* 3-3.

IV. Analysis and Findings

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). ^{3/} After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

^{3/} The factors enumerated in 10 C.F.R. § 710.7(c) include the following: the nature, extent, and seriousness of the conduct; the circumstances surrounding his conduct, to include knowledgeable participation; the frequency and recency of his conduct; the age and maturity at the time of the conduct; the voluntariness of his participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for his conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A. Security Concerns Associated with the Derogatory Information

As noted earlier in this Decision, the uncontested derogatory information in this case arises from the individual's recent use of illegal drugs, his arrest for possession of a controlled substance, and his breach of a Drug Certification that he signed three years ago in order to obtain his security clearance. The serious security concerns associated with the individual's conduct are the following.

With regard to the individual's repeated use of crack cocaine after having given the DOE his personal commitment to refrain from using illegal drugs in the future, I find that this conduct raises legitimate questions about the individual's honesty, reliability and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine the extent to which the individual can be trusted again in the future. *Personnel Security Hearing*, Case No. VSO-0013, 25 DOE ¶ 82,752 (1995) (affirmed by OSA, 1995); *Personnel Security Hearing*, Case No. VSO-281, 27 DOE ¶ 82,821 (1999), *aff'd*, *Personnel Security Review*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000), *Personnel Security Hearing*, VSO-0499, 28 DOE ¶ 82,850 (2002). Moreover, a person who violates a drug certification raises the concern that he or she will pick and choose which DOE security regulations he or she will obey or not obey with respect to classified information. *Personnel Security Hearing*, 27 DOE ¶ 82,823 (1999), *aff'd*, *Personnel Security Review*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000). I also find that the individual's conscious decision to ignore his drug certification left him susceptible to pressure, coercion, exploitation, or duress. This security concern is underscored by the individual's statements to the police officer after his arrest. The individual stated that he "would do anything" if the paperwork related to his arrest could be "lost" because he feared that an arrest for possession of illegal drugs would jeopardize his security clearance and job.

As for the individual's use of illegal drugs, the security concern is whether the individual can be trusted to respect laws and regulations, including those governing the security of classified information and facilities, in view of his willful disregard for the law prohibiting the use of illegal drugs. *Personnel Security Hearing*, Case No. VSO-0083, 25 DOE ¶ 82,807 (1996) (affirmed by OSA, 1996). In addition, depending on the degree of mental impairment caused by the use of the illegal drug, there is an increased risk that a person in an impaired state due to drug usage may disclose classified information or otherwise compromise national security.

Finally, the arrest for drug possession raises the same concerns set forth above with regard to willful disregard for the law and susceptibility to pressure, coercion, exploitation, or duress.

Based on all the foregoing, I find that the DOE properly invoked 10 C.F.R. § 710.8 (l) in suspending the individual's security clearance based on his multiple violations of his Drug Certification and his recent arrest for possession of a controlled substance. I find further that the uncontested evidence of the individual's repeated use of crack cocaine between December 2000 and December 2001 constituted significant derogatory information that warranted suspension of the individual's security clearance under 10 C.F.R. § 710.8(k) pending further review.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. See *Personnel Security Hearing* (Case No. VSO-0244), 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing* (Case No. VSO-0154), 26 DOE ¶ 82,794 (1997), aff'd, *Personnel Security Review* (Case No. VSA-0154), 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). Below is my analysis of the mitigating evidence presented by the individual in this case.

B. Mitigating Evidence

1. The Individual's Mental Health

This case is unusual in that the individual's principal defense to the security concerns under Criteria K and L is that his repeated use of cocaine and his concomitant violation of the drug certification occurred because he had an undiagnosed and untreated mental condition. Even though the DOE did not allege a security concern under Criterion H, 4/ I determined that the individual should be permitted to present expert evidence at the hearing regarding his mental health. It is the individual's contention that his mental state at the time of the conduct at issue explained why he behaved in the manner in which he did. To this end, the individual present the testimony of his personal physician, his clinical psychologist, and a counselor from his employer's Employee Assistance Program (EAP Counselor), all of whom have treated him since his arrest in December 2001.

Based on the documentary evidence in the record and the detailed, credible testimony of the individual's physician, psychologist and EAP Counselor, I am convinced that the individual has suffered from a mental illness since at least December 2001. The individual's psychologist who holds a Ph.D. in psychology and has more than 20 years experience in the field, opined at the hearing that the individual suffers from Major Depressive Disorder without psychosis, and substance abuse. Tr. at 169-170. The psychologist testified that the individual "had good intentions vis à vis his family and employer but his personality conformation, compounded by his depression and substance abuse, led him to self-defeating behaviors." Tr. at 161. The clinical psychologist explained further that the "substance abuse was more self-medication than recreational. It was an attempt to alleviate the distress he was experiencing." *Id.* at 162. The psychologist has seen the individual 20-25 times over the last six to seven months. *Id.* at 157.

The individual's physician is a medical doctor with a specialty in Addiction Medicine and has treated patients with alcohol and drug addictions exclusively for the last 15 years. The physician testified that when he first met the individual on January 7, 2002, the individual was acutely suicidal and depressed. *Id.* at 115. He opined that the individual was self-medicating his depression and loneliness by using cocaine with hitchhikers. *Id.* at 118. According to the individual's physician, the individual meets the definitions of Cocaine Dependence, Episodic and Major Depression, under the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, (4th ed.

4/ Criterion H concerns information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist, or licensed clinical psychologist, causes, or may cause, a significant defect in judgement or reliability." 10 C.F.R. § 710.8(h).

1994) (DSM-IV). At the hearing, the individual's physician testified that it was clear to him when he first met the individual that the individual had been depressed for quite some time and that the individual's arrest for illegal drugs had pushed him over the edge. *Id.* at 115. The physician testified that he treated the individual daily for two weeks while the individual was an outpatient at a local hospital. He continued to treat the individual on a monthly basis until April 2002 when he moved to private practice. He then resumed treating the individual in June 2002. From June to July 2002, the physician saw the individual three or four times. *Id.* at 116.

The EAP Counselor who is currently treating the individual holds a Bachelor's degree in psychology and a Master's degree in social work. *Id.* at 134. She testified that when she first met the individual in December 2001, he was in an "acute situation" and required immediate, intensive help. *Id.* at 136-138. She was instrumental in having the individual admitted on an outpatient basis to an intensive chemical dependency day treatment program. The EAP Counselor testified that she has seen the individual in a counseling setting on a weekly basis since his release from the hospital in late January 2002. *Id.* at 141. In addition, the individual signed an "EAP Agreement" in which he agreed to submit to monthly urinalysis testing, to attend Alcoholics Anonymous (AA) meetings twice each week and to abstain from all chemical use. The individual submitted documentary evidence showing that he did submit to monthly urinalysis testing and that the results of those laboratory tests were negative for the presence of drugs. Ex. E-2.

The evidence in the record overwhelmingly supports the conclusion that the individual's behavior in question was inextricably intertwined with his undiagnosed and untreated mental health issues. The record is also clear, however, that the individual stills needs medication and ongoing psychological treatment to manage his depression. For example, the individual's psychologist testified that the individual's Major Depressive Disorder is only in partial remission because the individual still requires medication and support. Tr. at 169. According to the psychologist, the individual will achieve full remission when he no longer needs treatment, is sleeping well, and his vegetative functions are in order. He is not at that point yet. ^{5/} Similarly, the individual's physician opined that the individual needs to be on medication for his depression for a one-year period before he would consider removing him from his medication regime. Because the individual had only been on antidepressants and had only received treatment for his mental illness for approximately eight months as of the date of the hearing, I cannot conclude that the individual's mental illness is in sustained full remission at this time.

Perhaps most telling of the individual's mental state while under stress is the fact that just before the hearing, the individual's physician prescribed lithium for him to augment the Prozac, Wellbutrin and

^{5/} I considered that the individual's psychologist holds a commission in one of the military branches and provides input into security clearance fitness evaluations for his own military subordinates and a small portion of the DOE contractor population. While the psychologist opined that he would restore the individual's clearance with certain caveats if he were the decision maker in this case, I must render my decision after evaluating all the evidence in the case, not just the information regarding the individual's psychological profile. For the reasons discussed *infra*, I do not find that it is clearly consistent with the national interest and would not endanger the common defense to restore the individual's access authorization at this time.

Zyprexa that he was taking. The physician explained at the hearing that he prescribed the lithium because of the individual's inability to keep his emotions under control and so that the individual would not lose his composure at the hearing. *Id.* at 128-129.

In the end, I cannot find that the individual's mental illness sufficiently mitigates the Criteria K and L security concerns at issue. The very risky behavior in which the individual engaged still occurred. I am not prepared, at least not in the context of this case, to accept the argument that the individual's demonstrated mental illness absolves him from being personally responsible for his own risky behavior. Moreover, his mental illness still exists, and a current mental illness is not included in the type of factors which can mitigate a risk in the sense contemplated by Section 710.7(c). Even if I were to accept that the individual's drug use and attendant violation of his drug certification are byproducts of his mental condition, I would require in this case evidence that the individual's mental condition is in full sustained remission or controlled by medication and associated therapy to the extent that a probability of recurrence of his mental illness is extremely small. The record in this case simply does not allow me to find that either of those two situations exist. I therefore conclude that even if a mental illness caused the individual to breach his drug certification and use illegal drugs, the individual has not presented sufficient evidence to convince me that his mental illness will not again cause him to engage in destructive and other unusual behavior. *See, e.g., Personnel Security Hearing*, Case No. VSO-0387, 28 DOE ¶ 82,776 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,022 (2001) (terminated by OSA, 2001).

2. The Individual's Drug Treatment and Future Intentions with regard to Illegal Drug Usage

The individual has taken significant steps to address his recent use of illegal drugs. The testimonial and documentary evidence demonstrates that the individual sought professional and medical assistance immediately after his December 2001 arrest for crack cocaine possession. He underwent an intensive two-week outpatient hospital program for Chemical Dependency where he spent eight hours each day with medical professionals to combat his drug usage. Tr. at 27, 115. Since his release from that hospital program, the individual has been in the care of a physician and psychologist continuously. He meets with both these medical professionals regularly. In addition, he receives counseling from an EAP Counselor two to three times each month and has signed an agreement in which he has agreed to abstain from illegal drug use, to attend AA twice weekly, and to subject himself to random urine testing. Two members from AA attested at the hearing that they have witnessed a transformation in the individual since he began attending those support groups. *Id.* at 177, 200. In each person's opinion, the individual began as a passive participant and gradually has emerged as an active, engaged participant in the meetings. *Id.* The individual also submitted documentary evidence showing that he has been drug tested five times beginning in February 2002 and that the results of all of those tests were negative. Ex. E-2.

In addition, the individual testified that he no longer associates with people who use drugs, no longer picks up hitchhikers, and will never use cocaine in the future. Tr. at 32-34. At the time of the hearing, the individual had not used illegal drugs for more than seven months. *Id.* at 69.

The individual also suggested at the hearing that the confluence of stressors in his life in 2000 and 2001 led him to use drugs. *Id.* at 45-46. For example, he explained that he began experiencing marital difficulties due to investment losses. His relationship with his son had begun to deteriorate and his relationship with his daughter had become strained after he had criticized her for receiving a “B” in a course. He claimed further that he felt shunned at his workplace; that he had no friends. The individual testified that he “smoked crack not to get high but to seek acceptance.” *Id.* at 57. He explained that when he first used crack, he did it to prove to a hitchhiker that he was not a policeman. *Id.* at 58. Later, he was just feeling lonely so he picked up hitchhikers to talk to. *Id.* at 55. When the hitchhikers offered him drugs, he explained that he was weak and “succumbed to [their] beckoning.” *Id.*

In evaluating whether the individual had mitigated the DOE’s concerns under Criterion K, I considered that the individual’s illegal drug usage was fairly recent, having occurred only seven and one-half months before the hearing. I also considered that his drug usage was not isolated. He used crack cocaine five to six times between December 2000 and December 2001.

While I believed the individual when he stated that he does not intend to use drugs again, I find, based on the expert testimony in the record, that the individual is not yet rehabilitated from his “drug addiction.” ^{6/} The individual’s physician testified at first that he was not sure anything could reassure him that the individual will not relapse, adding that the individual must continue taking his medication for depression, have periodic monitoring, continue meeting with the EAP Counselor, and have random drug tests. *Id.* at 120. The physician then opined that the individual’s odds of relapse are almost “nil.” *Id.* at 125. Notwithstanding this opinion, the physician admitted that the individual will not achieve sustained remission from his cocaine dependence until a period of one year has elapsed. *Id.* at 126. ^{7/}

Further, the EAP Counselor testified that the individual is “psychiatrically stable” in terms of substance abuse but needs to be in therapy until the end of the year. *Id.* at 149. She stated that he is in the process of recovering and if he continues doing what he is doing, his recovery chances are good. *Id.* If he slacks off, however, the picture is less certain. *Id.*

Ultimately, I find that not enough time has elapsed for me to gauge the likelihood that the individual will refrain from the use of illegal drugs in the future. While the individual convinced me that he now has friends at AA and professionals to whom he can turn in the event he faces other stresses in

^{6/} Because there is not a Criterion H issue before me, I make no finding about the precise nature of the individual’s drug problem and have elected to use the term “drug addiction” to describe generally the individual’s condition. The individual’s psychologist and EAP Counselor described the individual as a substance abuser while the individual’s physician opined that he meets the DSM-IV definition of Cocaine Dependence.

^{7/} While the doctor did not identify the date from which to measure the one-year period, I presume the period is measured no earlier than the date the individual first sought medical assistance for his mental illness and drug-related issues, i.e., late December 2001 or early January 2002.

his life, it is unclear to me how the individual will cope with a devastating event such as a serious illness or death. Many of the stressors that he enumerated at the hearing were, from my perspective, simply day-to-day stressors that most people encounter. For example, the individual's extreme reaction to his daughter's lashing out after he criticized her for having received a "B" in a course (i.e. "she does not love me anymore") is not the kind of stress that I would expect would cause a person to turn to illegal drugs. Finally, the individual's wife's testimony is significant, in my opinion, because she admitted that while she believes marital and family counseling would be useful, no such counseling sessions had been scheduled as of the date of the hearing.

3. The Individual's Intentions with regard to his Drug Certification

The individual admitted at the hearing that he felt guilty and ashamed after he used drugs because he realized that he had violated his drug certification. He admitted further that he was afraid that he was susceptible to coercion each time he used illegal drugs. *Id.* at 59.

Even though I believed the individual's physician's testimony that the individual was medicating his depression with drugs, the individual's admissions as set forth above signify that he knowingly violated his drug certification each time he elected to use crack cocaine and that he knew what he was doing was wrong on each occasion he used illegal drugs. Furthermore, the individual's statement to the police that he would "do anything" if they "lost" the paperwork on his arrest is most troubling. It is clear to me that the individual at least for a time was highly susceptible to blackmail, pressure, coercion, exploitation or duress during the time he repeatedly used illegal drugs.

The individual claims that he will not violate his drug certification again because the stressors that he experienced in 2000-2001 are not there anymore. As I pointed out in Section IV.B.2. above, many of the stressors that the individual described at the hearing and that he contends led to his destructive behavior appear to me to be equivalent to stressors that everyone encounters in day-to-day life. While the individual convinced me that he will seek assistance from his friends in AA and his medical professionals to cope with these day-to-day stresses in the future, I am not convinced that he will cope well should he be confronted with acute stressors such as serious illnesses or death. Ultimately, however, how well he copes with stressors in his life depends on whether he continues to take medication for his depression, whether he continues to attend AA regularly, whether he continues to undergo counseling with the EAP Counselor, whether he is monitored by his physician for the appropriateness of his medications, and whether he continues therapy with his psychologist. In the end, I find that more time needs to elapse before I could consider the individual reformed from his multiple abrogations of his Drug Certification.

4. Job Performance

The individual tendered into the record one outstanding performance evaluation and a "spot" recognition award that he received. Ex. A-1, B-1. In addition, his supervisor testified that the individual has performed his job well since transferring to his division in March 2001. This is a factor in the individual's favor because it shows that since the individual has received treatment for his mental illness, he is now a productive employee. The record further shows that prior to the

individual's arrest in December 2001, the individual was experiencing difficulties in the workplace both from a performance standpoint and from an interpersonal relations standpoint. While the individual's recent job performance tends to suggest that he is a productive employee now that he is "psychiatrically stable," it is not enough at this point, standing alone, to mitigate sufficiently the serious security concerns under Criterion L and K.

V. Conclusion

For the reasons set forth above, I find that there is sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria K and L as to the individual's access authorization. I find further that the individual has failed to bring forth sufficient evidence to mitigate the DOE's security concerns. Accordingly, after considering all the relevant information, favorable and unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not yet demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. I therefore find that the individual's access authorization should not be restored.

The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: November 4, 2002